IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 10 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

RAJIV TRADERS PVT LTD.

Appearance:

Mr. B B Naik for MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 25/03/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal, has referred the following question for the opinion of this Court under section 256(1) of the Income-tax Act, 1961.

"Whether, the Appellate Tribunal is right in law and on facts in directing the IAC (Asstt) to recompute capital gains in accordance with the decision of the Special Bench in the case of Rohiniben Trust (13 ITD 830) ?"

2. The matter relates to the assessment year 1983-84. The assessee company filed return of income on 30.7.1983. It had sold 2850 shares of M/s. McGaw Ravindra Laboratory (I) Ltd. for Rs. 9,09,150/- in the previous year. Out of these shares, 800 were bonus shares. At the time of filing the return, the assessee did not show any cost of bonus shares. Subsequently, during the course of the assessment proceedings, it was claimed that the cost of acquisition of bonus shares be taken at the average cost of the shares purchased. The ITO did not accept this contention and held that the cost of bonus share was `nil' when they were sold alongwith shares purchased. It was held that even otherwise, if cost of bonus shares is adopted at the average cost of shares purchased, there would be a corresponding reduction in the cost of acquisition of the shares purchased. The assessing officer therefore, held that the long term capital gains amounting to Rs. 5,91,597/would be taxed as computed in return of income. The CIT (Appeals) confirmed this decision of the ITO. In the appeal filed by the assessee before the Tribunal, the Tribunal held that the cost of bonus shares could not be taken as `nil' or at face value, but they had to be valued by spreading the cost of old shares, valuing old shares and the new issues, that is, bonus shares taken together if they ranked pari passu. In doing so, the Tribunal followed the decision of the Special Bench of the Tribunal, Bombay in the case of Rohini Trust vs. ITO reported in 13 ITO, 830 and reversed the order of the Commissioner (Appeals) with a direction to recompute capital gains in accordance with the decision of the Special Bench in the case of Rohini Trust.

3. Similar question came to be considered by the Hon'ble Supreme Court in Escorts Farms (Ramgarh) vs.CIT, 222 ITR, 509 in which it was held that where bonus shares are issued and some of the original shares are sold subsequently, their actual cost has to be reckoned only on the basis of the average value except in rare case where actual cost is notionally adopted or determined as it existed on the relevant statutory date. It was held that the High Court was justified in holding that the subsequent issue of the bonus shares had the effect of altering the original cost of acquisition of the shares. The Hon'ble Supreme Court applied its

earlier decision in CIT vs. Dalmiya Investment Company, reported in 52 ITR, 567. We find that the decision of the Tribunal on the said question is in consonance with the ratio of the decision of the Supreme Court in Escorts Farma's case. The question referred by the Tribunal is therefore, answered in the affirmative in favour of the assessee and against the Revenue. The Reference stands disposed of accordingly with no order as to costs.

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